

SENATE BILL

No. 56

Introduced by Senator Hollingsworth

February 12, 2010

An act to add Chapter 4.7 (commencing with Section 21159.40) to Division 13 of, and to repeal Section 21097 of, the Public Resources Code, relating to environmental quality.

LEGISLATIVE COUNSEL'S DIGEST

SB 56, as introduced, Hollingsworth. Environmental Quality: CEQA: exemption: critical infrastructure projects.

(1) The California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared by contract, and certify the completion of, an environmental impact report on a project, as defined, that it proposes to carry out or approve that may have a significant effect on the environment, or to adopt a negative declaration if it finds that the project will not have that effect. The act exempts from its provisions, among other things, certain types of ministerial projects proposed to be carried out or approved by public agencies, and emergency repairs to public service facilities necessary to maintain service.

This bill would exempt from CEQA a critical infrastructure project, which would include, among other projects, projects funded under the Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006 or the Disaster Preparedness and Flood Prevention Bond Act of 2006. The bill would provide that this exemption applies retroactively. Because a permitting agency, which includes a local agency, would be required to determine the applicability of, and to give

notice of, that exemption, this bill would create a state-mandated local program.

This bill would require a permitting agency, as defined, to issue or deny a permit within 15 working days of receiving a permit application from the Department of Transportation (Caltrans) or a local agency for a permit for a critical infrastructure project. The permitting agency would be authorized to apply to the ad hoc critical infrastructure permit review panel (panel), which would be created by the bill, for a time extension to consider the permit application. The bill would provide that a permit application is deemed to be approved if the permitting agency fails to act within 15 working days of receiving the permit application and fails to obtain a time extension from the panel. The bill would authorize Caltrans or the local agency to file an appeal to the panel if the permitting agency denies the permit application or if the issued permit imposes unreasonable conditions that would lead to a significant delay in a critical infrastructure project. The panel would be authorized, at a duly noticed public meeting, to review a permit or denial of a permit for which an appeal was filed and to take specified actions. By requiring a permitting agency to perform additional duties related to critical infrastructure projects, this bill would imposed a state-mandated local program.

(2) Existing law provides that, until January 1, 2010, in an environmental impact report, a negative declaration, a mitigated negative declaration, or other document required by CEQA for either transportation projects funded under the Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006, or projects funded under the Disaster Preparedness and Flood Prevention Bond Act of 2006, the failure to analyze adequately the effects of greenhouse gas emissions otherwise required to be reduced pursuant to regulations adopted under the Global Warming Solutions Act of 2006 does not create a cause of action for a violation of CEQA.

This bill would repeal that provision, thereby making a conforming change.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 21097 of the Public Resources Code is repealed.

~~21097. (a) The failure to analyze adequately the effects of greenhouse gas emissions otherwise required to be reduced pursuant to regulations adopted by the State Air Resources Board under Division 25.5 (commencing with Section 38500) of the Health and Safety Code in an environmental impact report, negative declaration, mitigated negative declaration, or other document required pursuant to this division for either a transportation project funded under the Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006 (Chapter 12.49 (commencing with Section 8879.20) of Division 1 of Title 2 of the Government Code), or a project funded under the Disaster Preparedness and Flood Prevention Bond Act of 2006 (Chapter 1.699 (commencing with Section 5096.800) of Division 5), does not create a cause of action for a violation of this division.~~

~~(b) Nothing in this section shall be construed as a limitation to comply with any other requirement of this division or any other provision of law.~~

~~(c) This section shall apply retroactively to an environmental impact report, negative declaration, mitigated negative declaration, or other document required pursuant to this division that has not become final.~~

~~(d) This section shall remain in effect only until January 1, 2010; and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2010, deletes or extends that date.~~

SEC. 2. Chapter 4.7 (commencing with Section 21159.40) is added to Division 13 of the Public Resources Code, to read:

CHAPTER 4.7. CRITICAL INFRASTRUCTURE PROJECTS

21159.40. For the purposes of this chapter, the following terms mean the following:

(a) “Critical infrastructure project” means any of the following projects:

(1) A transportation project funded in whole, or in part, under the Highway Safety, Traffic Reduction, Air Quality, and Port

1 Security Bond Act of 2006 (Chapter 12.49 (commencing with
2 Section 8879.20) of Division 1 of Title 2 of the Government Code).

3 (2) A project funded under the Disaster Preparedness and Flood
4 Prevention Bond Act of 2006 (Chapter 1.699 (commencing with
5 Section 5096.800) of Division 5).

6 (3) State Route 12 rehabilitation project in San Joaquin County.

7 (4) United States Route 101 rehabilitation project in San Luis
8 Obispo County.

9 (5) United States Route 101 Doyle Drive project in the City and
10 County of San Francisco.

11 (b) “Department” means the Department of Transportation.

12 (c) “Permitting agency” means a state, regional, or local agency
13 responsible for issuing a permit for a critical infrastructure project,
14 and includes, but is not limited to, any of the following:

15 (1) The Department of Fish and Game.

16 (2) A regional water quality control board.

17 (3) A regional air quality board.

18 (4) The California Coastal Commission.

19 (5) A certified local coastal program.

20 21159.41. (a) Except as provided for in this chapter, this
21 division shall not apply to a critical infrastructure project.

22 (b) This section shall apply retroactively.

23 21159.42. (a) There is hereby created an ad hoc critical
24 infrastructure permit review panel consisting of all of the following
25 officials:

26 (1) The Secretary of Business, Transportation and Housing.

27 (2) The Secretary for Environmental Protection.

28 (3) The Secretary of the Natural Resources Agency.

29 (b) The ad hoc critical infrastructure permit review panel shall
30 do all of the following:

31 (1) Hear and approve or deny a request for a time extension
32 filed by a permitting agency pursuant to subdivision (b) of Section
33 21159.43.

34 (2) Hear and approve or deny an appeal filed by the department
35 or a local agency pursuant to Section 21159.44.

36 21159.43. (a) Notwithstanding any other provision of law,
37 within 15 working days of receiving an application from the
38 department or a local agency for a permit for a critical infrastructure
39 project, a permitting agency shall issue the permit with any

1 conditions the permitting agency deems necessary or shall deny
2 the permit.

3 (b) (1) If the permitting agency is unable to issue or deny a
4 permit within 15 working days, the permitting agency may file for
5 a time extension with the ad hoc critical infrastructure permit
6 review panel.

7 (2) If the permitting agency fails to act upon the permit
8 application within 15 working days, the permit application shall
9 be deemed approved, unless the ad hoc critical infrastructure permit
10 review panel grants a time extension pursuant to paragraph (1).

11 21159.44. If the permitting agency denies a permit application,
12 or if the department or a local agency determines that a permit
13 issued pursuant to Section 21159.43 imposes unreasonable
14 conditions that would lead to a significant delay in a critical
15 infrastructure project, the department or local agency may file an
16 appeal with the ad hoc critical infrastructure permit review panel.

17 21159.45. Notwithstanding any other provision of law, if, at a
18 duly noticed public meeting, the ad hoc critical infrastructure
19 permit review panel reviews a permit or a denial of a permit
20 application for which the department or a local agency has filed
21 an appeal pursuant to Section 21159.44, and finds that the
22 permitting agency imposed an unreasonable condition, the panel
23 may waive the permit requirement, amend any condition
24 established pursuant to the permit, or issue a permit that has been
25 denied by the permitting agency.

26 21159.46. A permitting agency may adopt procedures for
27 expedited permits pursuant to this chapter.

28 SEC. 3. No reimbursement is required by this act pursuant to
29 Section 6 of Article XIII B of the California Constitution because
30 a local agency or school district has the authority to levy service
31 charges, fees, or assessments sufficient to pay for the program or
32 level of service mandated by this act, within the meaning of Section
33 17556 of the Government Code.

O